



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03-123 and 10-51; FCC 21-61; FR ID 29574]

Video Relay Service Compensation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) seeks comment on the adoption of compensation rates for Telecommunications Relay Services (TRS) Fund support of providers of video relay service (VRS). Because the compensation rates now in effect will be expiring, the adoption of new compensation rates is necessary so that VRS providers can continue to provide service and be compensated.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 03-123 and 10-51, by either of the following methods:

- *Federal Communications Commission's website:* <https://www.fcc.gov/ecfs/filings>. Follow the instructions for submitting comments.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Currently, the Commission does not accept any hand delivered or messenger delivered filings as a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

For detailed instructions for submitting comments and additional information on the rulemaking process, see document FCC 21-61 at <https://docs.fcc.gov/public/attachments/FCC-21-61A1.pdf>.

FOR FURTHER INFORMATION CONTACT: Michael Scott, Consumer and Governmental Affairs Bureau, at (202) 418-1264, or e-mail Michael.Scott@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Notice of Proposed Rulemaking (*NPRM*), document FCC 21-61, adopted on May 20, 2021, released on May 21, 2021, in CG Docket Nos. 03-123 and 10-51. The full text of document FCC 21-61 is available for public inspection and copying via the Commission’s Electronic Comment Filing System (ECFS).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

Initial Paperwork Reduction Act of 1995 Analysis

Document FCC 21-61 seeks comment on proposed rule amendments that may result in modified information collection requirements. If the Commission adopts any modified information collection requirements, the Commission will publish another document in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act. Pub. L. 104-13; 44 U.S.C. 3501-3520.

In addition, pursuant to the Small Business Paperwork Relief Act of 2002, the Commission seeks comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. Pub. L. 107-198; 44 U.S.C. 3506(c)(4).

SYNOPSIS:

1. In document FCC 21-61, the Commission seeks comment on the adoption of compensation rates for TRS Fund support of providers of VRS.
2. Section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, requires the Commission to ensure the availability of TRS to persons who are deaf, hard of hearing, deafblind, or have speech disabilities, “to the extent possible and in the most efficient manner.” TRS are defined in section 225 of the Act as “telephone transmission services” enabling such persons to communicate by wire or radio “in a manner that is functionally equivalent to the ability of [a person without hearing or speech disabilities] to communicate using voice communication services.” VRS is a form of TRS that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. VRS is supported entirely by the Interstate TRS Fund (TRS Fund), and VRS providers are paid compensation for the provision of VRS in accordance with the Commission’s rules and orders.
3. In 2007, the Commission introduced a tiered rate structure for compensating VRS providers, to reflect the per-minute cost differentials among VRS providers and to ensure both that, in furtherance of promoting competition, the newer providers would cover their costs, and the larger and more established providers were not overcompensated due to economies of scale. Under a tiered rate structure, a VRS provider’s monthly compensation payment is calculated based on the application of different rates to specified “tiers” of minutes. The highest rate is applied to an initial tier of minutes up to a defined maximum number, a lower rate is applied to the next tier, again up to a second defined

maximum number of minutes, and a still lower rate is applied to any minutes in excess of the second maximum. Since 2007, the Commission has periodically modified the tier structure and rates to align them more closely with the actual costs incurred by providers of varying size and levels of usage.

4. In 2013, the Commission made numerous regulatory changes affecting the VRS program. The Commission directed the Managing Director to contract with a neutral third party to build, operate, and maintain a video communications service platform, which would enable smaller VRS providers to compete more effectively, without having to operate their own service platforms. The Commission also expected that the development of a standard user-device interface would make it easier for smaller providers to compete for customers without having to replace the free devices routinely distributed by the largest VRS provider. After completing such structural reforms, the Commission anticipated being able to transition from the tiered rate structure to a single compensation rate for each element of the relay service. The Commission sought to align annual TRS Fund expenditures more closely with allowable provider costs. The Commission adopted a four-year interim compensation plan, whereby all the tiered rates would be reduced in stages on a “glide path” toward closer alignment with the weighted-average cost of providing VRS.

5. In 2017, the Commission reassessed its VRS compensation policy in light of intervening developments. The neutral VRS platform had proved to be impracticable. To the extent that the 2013 reforms had been implemented, they had not changed market conditions sufficiently to justify adoption of a single compensation rate. Accordingly, the Commission chose to defer consideration of major changes in the compensation system. Instead, to preserve choice among suppliers for VRS users, the Commission decided to maintain tiered compensation rates for the next four years. The Commission adopted a 3-tier rate structure for the four-year period and added an emergent rate to the tiered rate structure applicable to VRS providers with no more than 500,000 total monthly minutes.

6. In setting VRS compensation for Fund Year 2021-22 and beyond, the Commission proposes to continue using a tiered rate structure. The Commission seeks comment on the costs and benefits of this proposal and on the underlying rationale, discussed below.

7. First, developments over the last four years do not appear to warrant reconsideration of the Commission’s 2017 assessment that the expectations and assumptions underlying the 2013 proposal

to transition away from tiered compensation rates have not been borne out by experience. The reforms introduced in 2013 appear to have run their course, and further competitive improvements resulting from their implementation do not seem likely.

8. Second, certain fundamental facts also appear unlikely to change. VRS addresses a limited segment of the communications marketplace. As a result, there are built-in limitations on total demand for VRS, which appears to have stabilized relative to the high growth rates that occurred 10-15 years ago. Further, the Commission is unaware of any innovations substantial enough to cause a major change in the economics of providing VRS in the foreseeable future.

9. Third, in light of the above, there appears to be little reason to expect major changes in most VRS providers' relative per-minute costs. Today, there are only four certified VRS providers. No new entrants have sought certification to provide VRS since 2011. The current providers continue to operate at dramatically different scales, and there continues to be vast differences in the per-minute costs of VRS providers.

10. Notwithstanding the foregoing limitations, the Commission sees no reason to change the VRS compensation policy objectives the Commission has long pursued: (1) to continue bringing total TRS Fund payments into closer alignment with allowable costs, and (2) to preserve and promote quality-of-service competition among multiple providers. By offering VRS users a choice among multiple providers, the Commission has found, it can most effectively carry out the statutory mandate to ensure that "functionally equivalent" VRS is available to all eligible individuals, "to the extent possible and in the most efficient manner," in accordance with the Commission's minimum TRS standards and subject to rules that "do not discourage or impair the development of improved technology." Enabling multiple VRS providers to compete for customers based on service quality, the Commission has found, will best ensure that: (1) diverse service offerings are available, analogous to those afforded voice service users; (2) niche services are provided to meet the needs of certain segments of the sign language-using population, such as individuals who speak Spanish or are deafblind; and (3) VRS providers have incentives to maintain high standards of service quality and improve their VRS offerings. It might be less costly in the short run to set TRS Fund compensation in such a way that only the lowest-cost VRS provider can continue offering service. However, the Commission continues to believe that in the long

run, the removal of competitive choices risks degradation of service quality and elimination of diverse offerings, both of which are needed for functionally equivalent service to all eligible users. And, because “efficient service is not just about cost but also quality,” *Sorenson Communications, LLC v. FCC*, 897 F.3d 214, 228 (D.C. Cir. 2018), the Commission also believes that a policy of maintaining a choice of service offerings can be pursued consistently with the mandate that TRS be made available “in the most efficient manner.” 47 U.S.C. 225(b)(1). As the D.C. Circuit has explained, “competition promotes efficiency by preventing subpar service from a monopolist who has no fear of losing customers; *i.e.*, it promotes compliance with the service quality required by the mandatory minimum standards.” *Sorenson* at 229. The Commission seeks comment on these beliefs.

11. Accordingly, in setting compensation policy for the next period, under the current regulatory structure, the Commission tentatively concludes that it will best serve the purposes of section 225 of the Act if it structures VRS compensation to continue supporting an ecosystem in which multiple VRS providers can compete for minutes of use based on quality of service. The Commission seeks comment on this tentative conclusion and the premises set forth above, as well as any relevant data. The Commission also seeks comment on how best to set VRS compensation to promote the above benefits of allowing consumers a choice of VRS providers. Which past measures have succeeded or failed in this regard? What should the Commission’s role be, if any, in supporting more effective quality-of-service competition?

12. The Commission invites commenters to suggest alternatives to retaining a tiered-rate compensation methodology. The Commission urges commenters advocating alternatives to explain their proposals in detail, including how such proposals can deliver the benefits that the Commission has found are achievable through VRS competition (*i.e.*, making functionally equivalent TRS available to all eligible individuals in the most efficient manner, in accordance with minimum TRS standards, without discouraging or impairing the development of improved technology).

Alternative Approaches for Setting Tiered Compensation Rates

13. The Commission seeks comment on two overarching issues. First, should it adopt modified VRS compensation rates at this time, or “freeze” the current rates until a reliable, post-COVID-19 pandemic baseline for cost and demand has been established? Second, if the Commission decides to

move forward with rate-setting at this time, should the Commission retain the current setup, with an emergent rate and the current tier structure, or should it eliminate the emergent rate and adopt a modified tier structure, to improve provider incentives and move expenditures closer to costs?

Deferring Rate Changes to After the Pandemic

14. In light of the protracted duration of the COVID-19 pandemic, the significant demand changes associated with it, and the consequent increase in uncertainty as to future costs and demand, the Commission seeks comment about the feasibility of setting new VRS compensation rates at this time. In 2020, following the outbreak of the COVID-19 pandemic and efforts to reduce its spread, VRS providers experienced an unanticipated increase in VRS traffic levels. Providers incurred some additional costs resulting from the need for operational adjustments, such as migrating communications assistants from call centers to working at home, and hiring additional staff to cope with increased demand.

15. The TRS Fund administrator reports that the increased expenses incurred by VRS providers during the pandemic were more than offset by increased call volumes, resulting in a significant reduction in providers' average cost per minute from 2019 to 2020. Specifically, average demand has risen during the pandemic period by approximately 25%, and average per-minute provider costs declined from 2019 to 2020 by approximately 5.3%. At this time, the effects of the pandemic continue to be felt across the VRS industry, and it is unclear whether VRS traffic levels will return to a lower, pre-pandemic level. For many years, the Commission has found that the most reliable reference points in setting VRS compensation rates are the actual costs reported for the previous calendar year (in this case 2020) and the projected costs for the current calendar year (in this case 2021). Parties have raised the concern that, if the Commission relies on 2020 and 2021 data (as it would under the current practice), its estimate of per-minute costs could turn out to be understated in relation to actual post-pandemic costs, and rates set in reliance on 2020-21 data might not reasonably compensate VRS providers for the costs they will incur in the next rate period.

16. In light of these uncertainties regarding future VRS costs and demand, should the Commission maintain the existing VRS compensation tiers and rates for the next two TRS Fund rate periods, *i.e.*, until June 30, 2023, to allow the effects of the COVID-19 pandemic to resolve, so that future rates can be set based on cost and demand data that more reliably reflect post-pandemic conditions?

Under a rate freeze approach, providers receiving compensation at the emergent rate on June 30, 2021, as well as any new entrants, would continue to be compensated at the emergent rate. Or should the Commission move forward with adopting modified compensation rates based on current cost and demand estimates, which could be adjusted to address the likelihood of a reversion to pre-pandemic demand levels?

17. What are the likely costs and benefits of freezing current compensation rates for two years? The Commission invites advocates of this approach to explain and document the dimensions of any risk of further demand fluctuations they perceive. The Commission also seeks comment on whether such risks could or could not be mitigated by adopting a more conservative approach to ratemaking, such as by relying on 2019 costs as an additional benchmark for rate-setting. According to the TRS Fund administrator's estimate, the current rates allowed providers, on average, to recover 31.4% above allowable expenses in TRS Fund Year 2020-21—operating margins that are substantially above the zone of reasonableness (7.75%-12.35%) the Commission set in 2017. Is the risk of future changes in costs and demand so substantial that it warrants maintaining what appear to be over-compensatory compensation rates? Are there other effects that changing the compensation rate during this period could have on the provision of VRS?

18. In addition, it has been suggested that increased VRS demand, as well as limitations on in-person education during the pandemic, has constricted the current supply of VRS communications assistants as well as the number of American Sign Language (ASL) interpreters entering the training “pipeline” for future availability for VRS employment. The Commission invites commenters to submit any evidence that would support a prediction of additional increases in such labor costs, the likely extent of such increases, and whether such increases are likely to be temporary or permanent.

19. If the Commission decides to move forward and set revised compensation rates for 2022 and beyond, it invites parties to comment on how cost and demand estimates should be adjusted, if at all, to account for possible post-COVID costs and demand. Are 2020 and projected 2021 cost and demand data sufficiently reliable to serve as a reasonable basis to set rates for a new multi-year rate cycle? Should the Commission look only at provider-projected costs, *e.g.*, for 2021 and 2022, without considering historical costs? Alternatively, should the Commission substitute 2019 cost and demand data, in

anticipation that VRS costs and demand may decrease to pre-pandemic levels once the pandemic subsides? Or should the Commission assume that demand will remain higher than 2019 levels, and if so, how much higher? What labor cost adjustments, if any, should be applied?

Retaining or Modifying the Current Rate Structure

20. If the Commission decides to move forward and adopt a modified VRS compensation plan, what, if any, changes to the current rate structure would be warranted?

21. *Emergent rate.* The Commission seeks comment on whether to retain or eliminate the emergent rate for VRS providers with no more than 500,000 monthly minutes. Has there been any change in circumstances since 2017 that would justify retaining the emergent rate, notwithstanding the Commission's previously stated intention to terminate the emergent rate after June 2021? The Commission notes that no new applicants have requested certification to provide VRS since 2011. Are any firms currently planning or considering whether to apply for VRS certification? Have relevant circumstances changed for current beneficiaries of the emergent rate? For example, has any provider subject to the emergent rate managed to expand its market share, and if so, to what extent is continued application of the emergent rate still necessary? The Commission also notes that in 2017 it did not purport to assure cost recovery for *every* emergent VRS provider, but only to provide a reasonable opportunity for cost recovery, on a temporary basis, for those that have demonstrated an ability to grow substantially. Alternatively, are there other benefits from continuing to support very high-cost providers, even if they fail to reduce their per-minute costs substantially? Among the advantages of the tiered-rate system is that it allows support for smaller providers offering "niche" services to meet the needs of subsets of the signing population. Should the Commission make the continued application of the emergent rate conditional on a provider's success in providing specific niche services not offered by others? To assist its determinations regarding tier structure, the Commission seeks comment on the specific services and features offered by each VRS provider. To what extent do providers offer niche services or features targeted to specific user populations, to provide functionally equivalent communication for such users? For example, GlobalVRS states that in addition to providing ASL-to-English VRS, it provides ASL-to-Spanish VRS. Do other providers currently offer ASL-to-Spanish VRS, and to how many customers? Are there significant qualitative differences among such offerings? Which

providers, if any, offer a service to deafblind users—and to how many users—that permits the deafblind user to speak using ASL, while the CA communicates to the deafblind user in English or Spanish text that can be read by a refreshable Braille reader? Do other providers offer this type of service, or others, to deafblind users, and if so, what kind of service is offered to how many users?

22. As for costs, in addition to the greater TRS Fund expenditures needed to support very high-cost providers, would the costs of perpetuating a special rate for such providers include lessened incentives to innovate, reduce costs, and grow market share? What other costs result from the emergent rate? Are the benefits of retaining the emergent rate sufficient to justify the costs? If retained, should the Commission alter the maximum-minutes criterion for applying the emergent rate?

23. *Tier Structures.* The Commission also seeks comment on whether to retain or modify the current tier structures, whereby Tier I includes a provider's first 1 million monthly minutes, Tier II includes additional minutes up to 2.5 million, and Tier III includes all minutes above 2.5 million. The Tier I limit of 1 million minutes was adopted to ensure that as providers grew large enough to leave the emergent category, they would be subject to a rate that reflects their size and likely cost structure and that is appropriately lower than the marginal rate applicable to larger providers. Does this tier boundary continue to be appropriate? For example, has the ZVRS-Purple merger resulted in increased efficiencies? If so, what is the scale of such efficiencies, and does the existence of such efficiencies support the conclusion that substantial economies of scale can be achieved by growing above the benchmark of 1 million monthly minutes? Alternatively, if the emergent rate is eliminated, should Tier I be subdivided, so as to apply different rates, for example, to a provider's first 500,000 and second 500,000 minutes, or to a provider's first 300,000 minutes and its next 700,000 minutes? Are such changes warranted by relevant scale economies in the provision of VRS or a need to support niche services, as discussed above? Would these alternatives unduly limit a provider's incentive to increase its monthly minutes beyond 300,000 or 500,000?

24. The Commission also seeks comment on whether to retain or modify the structures of Tiers II and III. To what extent has the gap in per-minute costs between Sorenson and ZP Better Together, LLC (ZP), narrowed? The Commission seeks comment on whether the retention of a tier boundary at 2.5 million minutes is supported by experience over the past four years. Is the Commission's

2017 finding—that substantial scale economies are likely to be present even at the 2.5 million minutes level—still supportable or are scale economies exhausted below that level? Alternatively, does experience show that substantial economies are likely present above the current boundary? If the current Tier II upper boundary is no longer appropriate, should the boundary be increased or decreased, and to what level? Alternatively, should the Commission create a fourth tier, and with what boundaries? Should the current Tiers II and III be merged? More broadly, how should the Commission account for increasing economies of scale in setting VRS rates, and at what scale do such economies stop increasing? The Commission encourages providers to submit recent real-world data relevant to whether the provision of VRS continues to be characterized by substantial scale economies and the appropriate boundaries for setting tiered rates that reasonably reflect those economies.

25. With respect to all three tiers, what marketplace distortions, if any, may be created by retaining tier boundaries—or drawing new ones—that are not closely correlated to scale economies? What other costs and benefits are relevant to retaining or adjusting the number of tiers or the tier boundaries?

26. *Additional Compensation for Specialized Services.* The Commission also seeks comment on whether it would serve the objectives of section 225 of the Act for a VRS provider to receive additional per-minute compensation from the TRS Fund (in addition to the amount payable under the tiered formula) for the provision of certain specialized services, such as, for example, service to deafblind consumers, Spanish-ASL interpreting, or responding to requests that Certified Deaf interpreters be added to a call. What criteria should the Commission use to decide which, if any, specialized services should be supported by additional compensation and how to define the circumstances in which such services will be compensated? How should the additional reasonable costs of such services be determined for the purpose of setting an appropriate amount of additional compensation? What measures should the Commission take to prevent waste, fraud, and abuse in the provision of, or requests for, such specialized services?

Setting Tiered Rate Levels

27. Assuming that the Commission adopts adjusted compensation rates at this time, it seeks comment on the appropriate rate level for each tier. In 2017, the Commission sought to set the rates for each tier to limit the likelihood that any provider's total compensation will be insufficient to provide a

reasonable margin over its allowable expenses, and to limit the extent of any overcompensation of a provider in relation to its allowable expenses and reasonable operating margin. The Commission believes it should maintain this goal in setting tiered rates, although by setting rates for providers in discrete size classes based on general cost differentials between large, medium-sized, and small providers, the Commission does not seek or purport to guarantee all providers recovery of their individual costs. The Commission seeks comment on this belief.

28. *Operating Margin.* The Commission proposes that VRS compensation rates for the next cycle should aim to ensure that the total compensation paid to all providers allows an average recovery of an operating margin above allowable expenses that is within the zone of reasonableness (7.75%-12.35%). The Commission is unaware of relevant changes in financial markets or other conditions affecting the VRS industry that would warrant reassessment of the zone of reasonableness. The Commission seeks comment on this proposal, including any changes that would justify setting a higher or lower range of reasonable operating margins. Is the current allowable operating margin sufficient to attract capital, new entry, and promote functionally equivalent VRS services? What has been providers' experience since 2017? Further, should the Commission set a specific allowed operating margin within this range, and if so, at what percentage?

29. *Allowable Costs.* To the extent that, notwithstanding the Commission's history of comprehensive consideration of allowable cost issues, parties believe it is important to revisit allowable cost issues, the Commission urges commenters to state specifically in what respects the Commission's prior determinations on allowable costs are no longer valid, describe in detail any respects in which relevant circumstances have changed in the intervening period, and explain how the outcome they seek is consistent with, and furthers the purposes of, section 225 of the Act.

30. *Marginal Cost Benchmarks.* The Commission continues to believe that marginal cost for a provider of relevant size would be an appropriate benchmark for Tier II or Tier III rates if it can be reasonably estimated. Of particular concern, some VRS providers distribute substantial amounts of free user equipment as a marketing device to add or retain customers. In light of the waste and market disruption that can result from the use of device giveaways to recruit customers, the Commission seeks comment on whether to limit the compensation rates for tiers above Tier I to levels that do not exceed a

reasonable percentage above a relevant provider's marginal allowable cost of providing an additional minute of service. The Commission also believes this approach to setting rates will help ensure that the TRS Fund is not providing *de facto* support for the costs of user devices, contrary to section 225 of the Act and the Commission's longstanding rule precluding the use of the TRS Fund to support such distribution of user devices. The Commission seeks comment on the above-stated beliefs, and on how the Commission should estimate marginal allowable cost for purposes of applying a marginal-cost benchmark. For example, what expense categories should be included or excluded when calculating the marginal cost of providing an additional minute of VRS? Would a per-minute average of the operating expenses reported in Part B of the TRS Fund administrator's annual expense reporting form for VRS providers—which includes salaries and benefits for relay center staff, including communications assistants, telecommunications expenses, billing expenses, and relay center expenses—serve as a reasonable proxy for the marginal expense of providing an additional VRS minute? Should the marginal cost benchmark for a given tier be calculated as a weighted average of the marginal cost for those VRS providers for which that tier currently defines (or is projected to define) the highest applicable rate? The Commission seeks comment on whether marginal cost is an appropriate metric, or whether the Commission should consider alternative metrics. Would marginal-cost benchmarks for Tiers II and III deter continued investment in the service? Would they cause providers to “put on the brakes” and stop competing as the Commission feared in 2017? Or would they appropriately discourage providers from incurring wasteful marketing and other costs? What increment over marginal cost would be needed to ensure that beneficial effects are achieved, and detrimental effects are avoided?

31. *Rate Levels.* The Commission also seeks comment on where to set rates for the emergent rate (if retained) and Tiers I-III. If the emergent rate is retained, should the Commission increase it, *e.g.*, to the weighted average 2019 cost per minute for the current emergent providers, plus a 10% operating margin, maintain it at the current level of \$5.29, or decrease it, *e.g.*, to the weighted average of the emergent providers' projected cost per minute for 2022, plus a 10% operating margin? For Tier I, the Commission seeks comment on whether to increase the rate, *e.g.*, to \$5.29 (the current emergent rate), maintain the current \$4.82 rate, or reduce it, *e.g.*, to the weighted average of the emergent providers' projected cost per minute for 2022, plus a 10% operating margin. For Tier II, the Commission seeks

comment on whether to maintain the rate at \$3.97, or decrease it, *e.g.*, to the level of the weighted-average marginal allowable expense per minute (plus a reasonable operating margin) of those providers for which the Tier II rate is the lowest applicable rate. For Tier III, the Commission seeks comment on whether to maintain the current \$2.63 rate or decrease it, *e.g.*, to the level of the weighted-average marginal allowable expense per-minute (plus a reasonable operating margin) of those providers for which the Tier III rate is the lowest applicable rate. The Commission also invites parties to submit other suggested rate levels for each tier, with justification and supporting data.

32. To the extent the current tier structure is modified, as discussed above, the Commission seeks comment on appropriate rates for the modified tiers. Are there other factors the Commission should consider in determining appropriate rates of compensation for each tier? As an alternative, should the Commission consider Sorenson's suggestion to establish a unitary compensation rate for non-emergent providers at or about \$3.33, the current average per-minute compensation paid across all VRS providers? Should the Commission also consider ZP's proposal that the Commission keep the existing rates but increase the benchmark for Tier II from 2.5 million to 5 million minutes, under the theory, in ZP's view, that doing so would allow continued competition and increased investment in the community? The Commission seeks comment on these proposals.

Rate Period and Adjustments

33. *Rate Period.* The Commission seeks comment on the duration of the next rate period. In the current circumstances, what rate period will appropriately balance the needs for administrative efficiency, rate certainty, and cost-reduction incentives with the need for a timely review of how VRS costs may change in the future?

34. *Glide Path.* If the Commission makes substantial reductions in any tiered rate, should it transition to that level in stages to avoid disruption of service to VRS consumers? What would be a reasonable annual percentage rate reduction for this purpose? For IP CTS, the Commission recently adopted a "glide path" for the IP CTS compensation rate, with a 10% annual reduction towards cost-based rates. Would a 10% annual reduction be appropriate for VRS?

35. *Price Indexing Adjustments.* The Commission seeks comment on whether a price indexing formula, analogous to price-cap factors, should be applied to tiered rates during a multi-year rate

period, and on the appropriate indices to use to reflect inflation and productivity. Is the application of price indexing factors needed to ensure that VRS providers have a reasonable opportunity to recover costs, to provide a sufficient incentive to reduce costs, or to prevent overcompensation of providers due to predictable future productivity-related cost declines? If adopted, how should a price-indexing approach be structured in the context of tiered rates, *e.g.*, to account for any disparities in expected productivity gains between small and large providers?

Initial Regulatory Flexibility Analysis

36. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *NPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadline for comments specified in the DATES section. The Commission will send a copy of document FCC 21-61 to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

Need For, and Objectives of, the Proposed Rules

37. The Commission intends to develop a multi-year cost-based compensation rate methodology for VRS. To develop a complete record the Commission seeks comment on maintaining a tiered rate structure, including the specifics for the tiered structure and for setting such rates, and in the alternative, freezing the current rates. The Commission is making these proposals for the purpose of allowing recovery of reasonable provider costs and ensuring that functionally equivalent VRS is provided in the most efficient manner. The Commission seeks comment on these proposals, which include a number of various policy questions and alternatives for consideration.

Legal Basis

38. The authority for this proposed rulemaking is contained in sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 225.

Small Entities Impacted

39. The proposals in the *NPRM* will affect obligations of VRS providers. These services can be included within the broad economic category of All Other Telecommunications.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. The proposed compensation methodologies will not create reporting, recordkeeping, or other compliance requirements.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

41. The Commission is taking steps to minimize the impact on small entities and considering significant alternatives by identifying multiple methodologies for compensating VRS providers for the provision of VRS. The Commission seeks comment on maintaining tiered rates, including the specifics for the tiered structure and for setting such rates, and in the alternative, freezing the current rates. The Commission will consider these proposals to determine the best compensation methodology for ensuring choice among suppliers for VRS users and to help maintain functionally equivalent service and maintain an efficient VRS market over the long term in accordance with the Commission statutory obligations. The Commission seeks comment on the effect these proposals will have on all entities that provide VRS, including small entities.

42. The Commission also seeks comment from all interested parties. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the *NPRM*. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the *NPRM*, in reaching its final conclusions and acting in this proceeding.

Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

43. None.
Federal Communications Commission.

Marlene Dortch,
Secretary,
Office of the Secretary.

